

(4) The effect of denial of admission or termination of tenancy on household members not involved in the offending action;

(5) The demand for assisted housing by families who will adhere to lease responsibilities;

(6) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and

(7) The effect of the responsible entity's action on the integrity of the program.

(b) *Exclusion of culpable household member.* You may require an applicant (or tenant) to exclude a household member in order to be admitted to the housing program (or continue to reside in the assisted unit), where that household member has participated in or been culpable for action or failure to act that warrants denial (or termination).

(c) *Consideration of rehabilitation.* (1) In determining whether to deny admission or terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, you may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, you may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(2) If rehabilitation is not an element of the eligibility determination (see § 5.854(a)(1) for the case where it must be considered), you may choose not to consider whether the person has been rehabilitated.

(d) *Length of period of mandatory prohibition on admission.* If a statute requires that you prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, you may apply that prohibition for a longer period of time.

(e) *Nondiscrimination limitation.* Your admission and eviction actions must be

consistent with fair housing and equal opportunity provisions of § 5.105.

#### § 5.853 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act*, *covered person*, *drug*, *drug-related criminal activity*, *federally assisted housing*, *guest*, *household*, *HUD*, *other person under the tenant's control*, *premises*, *public housing*, *public housing agency (PHA)*, *Section 8*, *violent criminal activity*.

(b) *Additional terms used in this part* are as follows.

*Currently engaging in.* With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, *currently engaging in* means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.

*Owner.* The owner of federally assisted housing.

*Responsible entity.* For the Section 8 project-based certificate or project-based voucher program (part 983 of this title) and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an Annual Contributions Contract with HUD. For all other federally assisted housing, the responsible entity means the owner of the housing.

#### DENYING ADMISSIONS

#### § 5.854 When must I prohibit admission of individuals who have engaged in drug-related criminal activity?

(a) You *must* prohibit admission to your federally assisted housing of an applicant for three years from the date of eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, you may admit the household if:

(1) The evicted household member who engaged in drug-related criminal activity has successfully completed an approved supervised drug rehabilitation program; or

(2) The circumstances leading to the eviction no longer exist (for example,

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the criminal household member has died or is imprisoned).

(b) You *must* establish standards that prohibit admission of a household to federally assisted housing if:

(1) You determine that any household member is currently engaging in illegal use of a drug; or

(2) You determine that you have reasonable cause to believe that a household member's illegal use or a pattern of illegal use of a drug may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

### **§ 5.855 When am I specifically authorized to prohibit admission of individuals who have engaged in criminal activity?**

(a) You may prohibit admission of a household to federally assisted housing under your standards if you determine that any household member is currently engaging in, or has engaged in during a reasonable time before the admission decision:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(4) Other criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor or agent of the PHA or owner who is involved in the housing operations.

(b) You may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (a) of this section (*reasonable time*).

(c) If you previously denied admission to an applicant because of a determination concerning a member of the household under paragraph (a) of this section, you may reconsider the applicant if you have sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, determined by you, before the admission decision.

(1) You would have *sufficient evidence* if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the

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specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which you verified. (See subpart J of this part for one method of checking criminal records.)

(2) For purposes of this section, a household member is *currently engaged in* the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

### **§ 5.856 When must I prohibit admission of sex offenders?**

You must establish standards that prohibit admission to federally assisted housing if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, you must perform necessary criminal history background checks in the State where the housing is located and in other States where the household members are known to have resided. (See § 5.905.)

### **§ 5.857 When must I prohibit admission of alcohol abusers?**

You must establish standards that prohibit admission to federally assisted housing if you determine you have reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

## TERMINATING TENANCY

### **§ 5.858 What authority do I have to evict drug criminals?**

The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for you to terminate tenancy. In addition, the lease must allow you to evict a family when you determine that a household member is illegally using a drug or when you determine that a pattern of illegal use of a drug interferes with the